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112100—41

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 311

WILLIAM SCHNEIDERMAN, ALSO KNOWN AS VELVEL SCHNEIDERMAN, PETITIONER

v.

UNITED STATES OF AMERICA

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 908–918) is reported in 119 F. (2d) 500. The opinion of the District Court (R. 39–45) is reported in 33 F. Supp. 510.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 28, 1941 (R. 919). The petition for a writ of certiorari was filed July 26, 1941. The jurisdiction of this Court is invoked under

Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Petitioner at the time of his naturalization in 1927 failed to disclose his membership in and activities for the Communist party. The United States brought suit to cancel the certificate of naturalization on the ground that it was illegally and fraudulently procured. The question is whether there is sufficient evidence to support the finding of the courts below that petitioner at the time of his naturalization did not bear allegiance to and support the principles of the Constitution and laws of the United States.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix.

STATEMENT

The United States, under 8 U. S. C., sec. 405, brought suit to cancel the certificate of naturalization issued to petitioner, a native of Russia, on the ground that it was illegally and fraudulently procured (R. 1–10). The complaint charged that at the time of his naturalization, on June 10, 1927, petitioner was not, and that during the five years prior to filing his petition for naturalization he had not behaved as, a person attached to the principles of the Constitution and well disposed to the good order and happiness of the United States, as re-

quired by 8 U. S. C., sec. 382. It further alleged that during all this time petitioner was a member of and affiliated with, and believed in and supported the principles of, certain Communist Party organizations, the principles of which were opposed to the principles of the Constitution and advised, advocated, and taught the overthrow of the Government, Constitution, and laws of the United States by force and violence (R. 4–5). An affidavit by an attorney in the Immigration and Naturalization Service, Department of Labor, made a part of the complaint (R. 3), also charged that petitioner when he took the oath of allegiance did not intend to bear true faith and allegiance to the Constitution and laws of the United States (R. 9).

Petitioner in his answer denied the material allegations of the complaint, except insofar as it charged his membership in the Communist Party of America, which he admitted (R. 11). He denied that at any time during which he was a member the Communist Party of the United States believed in or advocated the overthrow of the Government, Constitution, or laws of the United States by force or violence or otherwise, and alleged that petitioner and the Communist Party believed in, advocated, and were committed to uphold the achievements of democracy and the rights of and to life, liberty, and the pursuit of happiness, and to defend the United States Constitution against all of its enemies (R. 12–13).

The evidence may be summarized as follows:

Petitioner was born in Rumanov, Russia August 1, 1905, and entered the United State about September 22, 1908 (R. 74). He early be came interested in the principles of Communism and, since the age of sixteen years, was active i various official capacities, of increasing impor tance and responsibility, in Communist Party organizations (R. 86–98, 357–359).[1] Petitione applied for first papers when he was eighteen an became a citizen when he was twenty-one (R. 358)

Petitioner admitted that at the time of his nat uralization he desired to bring about a socialisti form of government (R. 862, 898) and that he ha consistently subscribed to the general principles o the Communist Party and the Communist Inter national (R. 92, 102–103, 108). Petitioner, how ever, testified to his belief that the Communist pro gram would be a long-range process (R. 898) an disavowed the use of force and violence (R. 862

[1] Petitioner was made educational director of the Youn Workers' League upon its organization in 1922 and later be came its chief executive officer (R. 86–87, 89–91); the League was affiliated with the Communist International (R. 9 208). Since 1924 or 1925 petitioner has been a member o the Communist party or its predecessors (R. 91, 93). Pe tioner has served as local and state secretary, as district or ganizer, and as member of the National Committee of th Communist Party (R. 94–96), which is affiliated with th Communist International (R. 13, 15, 172–174, 208, 245–24 253). He has been a candidate for office on the Communis ticket (R. 180–181).

867–868, 897–898) or allegiance to any foreign power (R. 886–887).

Much of the evidence in the record consists of books and pamphlets issued, distributed, or used by various communist organizations. Petitioner, as educational director of the Young Worker's League and as a participant in open forums, used a number of these books.[2] Other publications were introduced into evidence which were published and distributed by book stores connected with the Communist Party.[3]

These publications and supporting testimony of a former Party member would support the inferences that the Communist Party advocated the establishment of a communist form of government in the United States and the overthrow of

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[2] *N. Bucharin* and *E. Preobrazhensky*, A B C of Communism (R. 185–194, 202, 268); *Karl Marx* and *Friedrich Engels*, The Communist Manifesto (R. 124–128, 189, 206); Programme of the Communist International (R. 109–123, 206); *Nicolai Lenin*, The State and Revolution (R. 89, 129–144, 206); Left Wing Communists and Infantile Disorder (R. 89, 206, 207, 144–147); Programme of the Young Communist International (R. 152–157, 208); *M. J. Olgen*, Why Communism? Plain Talks on Vital Problems (R. 166, 220–221, 272).

[3] *I. Stalin*, Theory and Practice of Leninism (R. 212–218); Platform of the Class Struggle (R. 273); The International Youth (R. 269–270); New Frontiers (R. 273); Programme and Constitution of the Workers' Party of America (R. 275). Government evidence indicated that these stores were operated by the Party (R. 211–212) while petitioner denied that there was either ownership or control (R. 830).

the capitalistic system (R. 44, 110–115, 124, 126, 167–168, 172, 197–201, 214, 448, 871, 874); that it considered the present Constitution and form of government inconsistent with its goal (R. 256–257, 286–288, 296); and that the Party advocated the use of force and violence to accomplish its end (R. 126–127, 166–172, 174, 271, 330–331, 878–881). The Communist Party had advocated these doctrines during the relevant time of petitioner's naturalization and for five years before, through the contemporary programs and writings of Communist organizations and leaders, known to and used by petitioner (see R. 110, 112–119; 129, 137–141; 147, 153–155; 185, 191–192; 255, 256–257; 263, 267–268).

The program of the Communist International and the resolutions of the domestic Party, introduced in evidence, indicated that in the event of hostilities with Soviet Russia the Party's first allegiance would be toward the U. S. S. R. (R. 117–119, 245–246). Propagandization of the military forces was an integral part of the Communist program (R. 155, 167–168, 171). Membership in the Party was shown, by the 1938 constitution, to require undeviating recognition of the Party decisions as to policy and tactics (R. 20, 27).

Petitioner, on the other hand, testified that the Constitution and By-Laws of the American Communist Party, adopted in 1938, was the only official expression of the principles of the Communist Party (R. 364), that it overrode any

conflicting statement (R. 365–368, 834–839, 856–861), and that it represented the views which he personally had always maintained (R. 365). This constitution of the Party (R. 14–38) contains nothing inconsistent with a peaceful accomplishment of the Party objectives and states the Party's defense of the United States Constitution against its reactionary enemies (R. 14). Petitioner's evidence is to the effect that force and violence has not been advocated by the Party (R. 375–376, 461–466) but that it predicted its use by the forces of capitalism against the workers, to prevent their obtaining control of the Government, and that the Party intended its use only in defense of the popular Government (R. 401–426, 592, 679–688, 755–757). Recent statements of Communist leaders were admitted in evidence and were to the same effect (R. 427–429, 445–448, 455–456).

The district court at the conclusion of the hearing filed a memorandum opinion (R. 39–45) and findings of fact and conclusions of law (R. 47–53). The court found that the Communist Party advocated overthrow of the United States Government by force and violence, and that its principles were opposed to those of the Constitution and laws of the United States (R. 45–50). The court also found that petitioner was a member of the Communist Party at the time of his naturalization, that he bore allegiance to the U. S. S. R. rather than to the United States, and that he concealed these facts from the naturalization court. Accordingly,

the court found that petitioner for five years prior to filing his petition had not been attached to the principles of the Constitution and the good order of the United States, and that he had taken the oath of allegiance in bad faith (R. 48–52). The court therefore concluded that the decree of naturalization had been illegally (R. 48, 51) and fraudulently (R. 50, 51) procured, and entered its decree declaring void the certificate of citizenship (R. 54–55).

The circuit court of appeals affirmed (R. 919) on the ground that the certificate of naturalization was illegally procured (R. 912). It affirmed the findings of the district court that the Communist Party advocated the overthrow of the Constitution and laws of the United States by force and violence (R. 917) and that petitioner's adherence to the Party principles made incredible his testimony of support of the Constitution and allegiance to this country (R. 916, 918).

ARGUMENT

The certificate of naturalization issued upon petitioner's oath and proof that he was attached to the principles of and would support and defend the Constitution and laws of the United States, abjure all allegiance to any foreign state, and bear true faith and allegiance to the Constitution and laws of the United States (8 U. S. C., secs. 381, 382, *infra*). Upon the cancellation proceedings

the district court was required to determine whether this oath and proof were false or true.

1. The parties and the courts below have accepted without question that belief in or advocacy of force and violence is a sufficient ground for disqualification for citizenship. Whatever the philosophic and historical problems raised by such a formula, that acceptance may appropriately be followed here.[4]

The evidence on this issue, summarized in the Statement (*supra*, pp. 4–7), was conflicting. Petitioner's testimony as to his personal beliefs was necessarily placed against the doctrines of the Communist Party, of which he was an active member. That evidence, in turn, was at least partially equivocal. On the one hand there was evidence that, particularly during the period when petitioner was naturalized, the Party advocated the use of force and violence to accomplish its ends. On the other hand, petitioner's evidence was di-

[4] When one's belief in or advocacy of the utility of force and violence relates to the prediction of its defensive use by the majority in the indefinite and contingent future, that belief or advocacy may reflect simply an interpretation of history which has little relevance to the contemporary obligations of citizenship. But it is not to be expected that the government which confers the privilege of citizenship would extend that privilege to one who then believed in the use of violent means to change the character and organization of that government. In any event, petitioner's apparent acquiescence in the relevance of the "force and violence" test remove its difficulties so far as this record is concerned.

rected to showing that Communist philosophy was not one of force and violence as an initial means to achieve working-class ends, but only a prediction that it would be necessary to defend the workers against capitalist aggression; and that the recent constitution of the Party, and the recent statements of its leaders, contemplated an orderly movement of reform through peaceful and constitutional means.

Faced by this conflict in the evidence, the lower courts have drawn their inference against petitioner. Other courts have similarly ruled.[3]

2. We think it impossible for one to assume the obligations of citizenship without an undivided allegiance to the United States. The district court found that petitioner at the time of his naturalization did not intend to bear true allegiance to the United States but instead intended to maintain allegiance to the U. S. S. R. (R. 51); the circuit court of appeals confirmed this finding (R. 918). There was conflicting evidence, summarized in the Statement (*supra*, pp. 5–6), on this issue. Petitioner's testimony as to his own allegiance, and the inferences to be drawn from

[3] *Kenmotsu* v. *Nagle*, 44 F. (2d) 953 (C. C. A. 9); *Brasch* v. *Cahill*, 88 F. (2d) 545 (C. C. A. 9); *United States* v. *Tapalesangi*, 40 F. (2d) 255 (C. C. A. 3); *Jurgans* v. *Seaman*, 25 F. (2d) 35 (C. C. A. 8); *Antolish* v. *Paul*, 283 Fed. 957 (C. C. A. 7); *United States* v. *Smith*, 2 F. (2d) 90 (D. C. W. D. N. Y.); *United States ex rel. Aberra* v. *Wallis*, 268 Fed. 413 (D. C. S. D. N. Y.); *Ex parte Vilarino*, 50 F. (2d) 582 (C. C. A. 9); *Ungar* v. *Seaman*, 4 F. (2d) 80 (C. C. A. 8); *Skeffington* v. *Katzeff*, 277 Fed. 129 (C. C. A. 1).

the 1938 constitution of the Party and recent statements of Communist leaders, were contradicted by the inferences to be drawn from official communist programs of 1925 and 1929. The lower courts have resolved the issue against petitioner.

3. Whatever the difficulty of squaring a penalty for political beliefs with traditional freedom of thought and expression, that is not the issue in this proceeding. The issue here is one of citizenship and not of punishment, and the statutes properly make political beliefs and allegiance the keystone of the requirements for naturalization. And the fact that the cancellation proceedings were brought thirteen years after naturalization becomes rather less significant when it is considered that petitioner makes no claim that there has been any change in his beliefs or allegiance during this period.

4. Whether petitioner at the time of his naturalization was attached to the principles of the Constitution and laws of the United States, and bore true allegiance to the United States, is a question turning on the facts of his particular case.[8] Under ordinary canons of appellate practice, a decision confined to the four corners of a particular record presents no occasion for review by this court. Even the more general question whether membership in the Communist Party in itself disqualifies one from citizenship by naturalization cannot be

[8] Cf. *United States* v. *Macintosh*, 283 U. S. 605, 616; *Kessler* v. *Strecker*, 307 U. S. 22, 33.

isolated from the facts of the particular cases. This case, therefore, does not afford any certain occasion for a general clarification of the difficulties surrounding the content of the naturalization statutes.

CONCLUSION

The decision of the court below confirms the finding of the district court on the evidence presented by this record. At least with respect to the petitioner's allegiance, it is correct. There is no conflict of decisions or occasion for further review. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1941.

APPENDIX

8 U. S. C., sec. 381, provides:

> He [any alien] shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

8 U. S. C., sec. 382, provides:

> No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3) during all the periods referred to in this section he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. At the hearing of the petition, residence in the county

where the petitioner resides at the time of filing his petition, and the other qualifications required by this section during such residence, shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by section 379 of this title to be included in the petition. * * *

8 U. S. C., sec. 405, provides:

It shall be the duty of the United States district attorneys for the respective districts, or the Commissioner of Immigration and Naturalization or Deputy Commissioner of Naturalization, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. * * *

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